

IDAP REPORT

Property:	25 Hunter Street STRATHFIELD DA 2020/132
Proposal:	Demotion of all existing structures, tree removal, proposed dwelling house with a basement level and an in-ground swimming pool.
Applicant:	NEMCO DESIGN PTY LTD
Owner:	E Abdallah and R Taouk
Date of lodgement:	5 August 2020
Notification period:	19 August 2020 to 02 September 2020
Submissions received:	One
Assessment officer:	P Santos
Estimated cost of works:	\$1,491,434.00
Zoning:	R2 - Low Density Residential - SLEP 2012
Heritage:	Subject site does not contain a Heritage Item or is within a Heritage Conservation Area. A Heritage Item – (I126) “Fairholm” Victorian House, adjoins the subject site.
RECOMMENDATION OF OFFICER:	REFUSAL

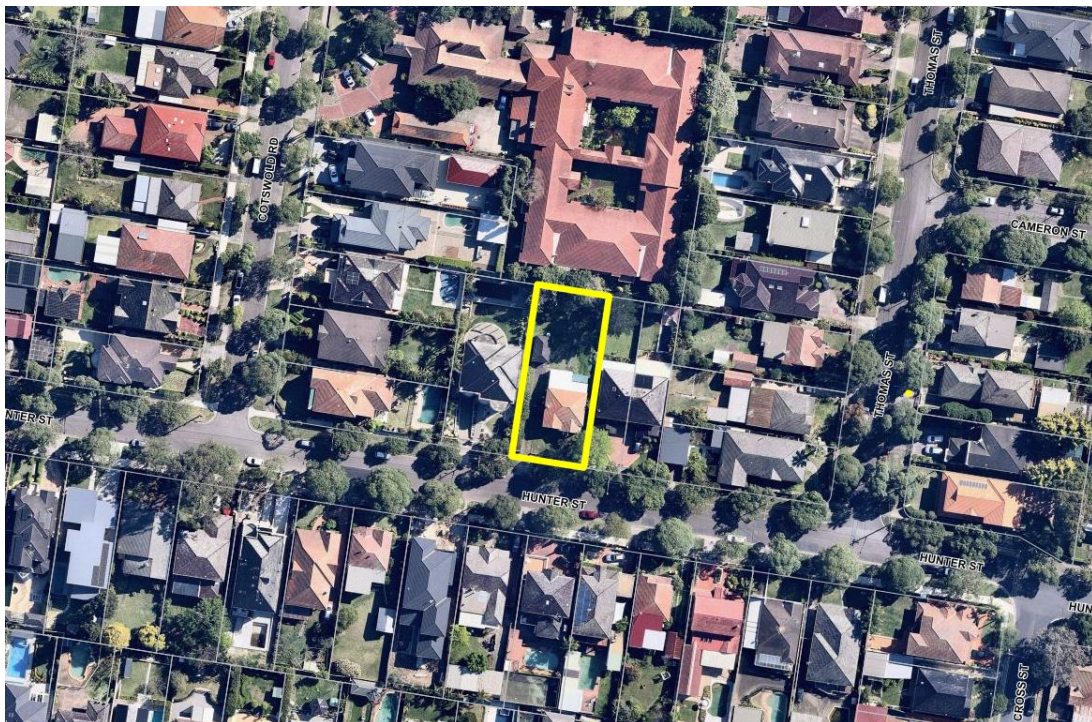


Figure 1. Aerial imagery of the subject site (outlined) and the immediate locality.

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the demolition of all existing structures, tree removal, proposed dwelling house with a basement level and an in-ground swimming pool.

Site and Locality

The site is identified as 25 Hunter Street, Strathfield and has a legal description of Lot 27 DP 9590. The site is a regular shaped parcel of land and is located on the norther side of Hunter Street.

The site has a width and depth of 19.17m and 45.7m, respectively, and an overall area of 876.2m².

The locality surrounding the subject site contains a mixture of low density residential development.

Strathfield Local Environmental Plan

The site is zoned R2 - Low Density Residential under the provisions of Strathfield LEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal does not comply with Clause 4.4C Exceptions to Floor Space Ratio (Zone R2) principal development standard of the SLEP 2012.

Development Control Plan

A discussion of the proposal's compliance and non-compliance with Council's development controls is detailed in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan from 19 August 2020 to 02 September 2020, where one submission/s was/were received raising visual privacy concerns.

Issues

- Floor space ratio;
- Failure to satisfy the provisions of Clause 4.6 of the SLEP 2012;
- Floor to ceiling heights;
- Parapet height;
- Number of storeys;
- Front setback;
- Front fence height; and
- Driveway width at property boundary.

Conclusion

Having regards to the heads of consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979*, Development Application 2020/132 is recommended for refusal subject to attached reasons of refusal.

REPORT IN FULL

Proposal

Council received an application for the demotion of all existing structures, tree removal and construction of a dwelling house with a basement level and an in-ground swimming pool. More specifically, the proposal includes -

Basement level:

- Three car parking spaces;
- Bin storage area;
- Bicycle storage area; and
- Storage room.

Ground floor level:

- A lounge;
- A laundry room;
- A common bathroom;
- A formal dining area;
- An office room;
- A wine cellar;
- An open plan living, dining and kitchen with butler's pantry; and
- An attached alfresco area with a bathroom

First floor level:

- Four bedrooms with walk-in-robe, three of the bedrooms have ensuite;
- A storage room;
- An attached front and rear balconies; and
- A common bathroom.

External works:

- An in-ground swimming pool;
- 1.8m front fence; and
- Ancillary landscaping and earthworks.



Figure 2. Extract of the south elevation of the dwelling house (source: Nemco Design, dated 22/09/2020).

The Site and Locality

The subject site is legally described as Lot 27 DP 9590 and commonly known as 25 Hunter Street, Strathfield. It is located off the northern side of Hunter Street between Cotswold Road and Thomas Street.



Figure 3. Closer aerial imagery of the subject site (outlined) and the immediate locality.

The site is regular in shape and has average width and depth of 19.17m and 45.7m, respectively. The property has an area of 876.2m².

The site gradually falls to the front by 5%.

The site is currently occupied by a single-storey brick dwelling house with a terracotta-tiled gable roof and a detached garage located behind the building line, vehicular access is provided to the site via an existing driveway from Hunter Street.



Figure 4. Front façade of the existing dwelling on the site.



Figure 5. The detached garage located behind the building line.

The current streetscape is predominantly characterised by single to two-storey dwelling houses and open-form front fences that reach up to 1.8m in height.

The immediate locality is predominantly characterised by low-density residential development. Strathfield Gardens Retirement Village is located immediately to the rear of the site and Trinity Grammar Preparatory School is about 545m to the north east.

Background

05 August 2020	The subject development application was lodged.
19 August 2020	The DA was publicly notified until 02 September 2020, where one submission was received. The details of the submission is discussed in the report.
28 August 2020	A site visit was undertaken by the Development Assessment Planner.
09 September 2020	An additional information request letter was uploaded on the NSW Planning Portal, raising the following concerns. <ul style="list-style-type: none"> • Correct owners' consent; • Trees to be clearly demonstrated on the plans; • Arborist Report and Tree Management Plan; • Basement footprint; • Basement ceiling height;

- Basement entry width;
- Driveway width at the property boundary;
- Basement windows;
- Floor space ratio;
- Waste bins location;
- Void over the north-western living area;
- Two-storey portico and front porch protrusion;
- First floor front setback;
- Retaining wall on boundaries and excavation;
- Landscaped area and landscape plan;
- Swimming pool setback;
- Shadow diagrams; and
- Privacy and BASIX Certificate.

20 October 2020	Further additional information was requested, raising the following concerns – <ul style="list-style-type: none">• Correct owners' consent;• Floor space ratio; and• Provision of Clause 4.6 variation statement.
21 October 2020	The applicant submitted the requested information apart from the Clause 4.6 variation statement.
18 November 2020	The Development Assessment Planner verbally followed-up on the Clause 4.6 variation statement over the phone, which was requested on the NSW Planning Portal on 19 November 2020.
20 November 2020	The Clause 4.6 variation statement was submitted via the NSW Planning Portal.

Referrals – Internal and External

Tree

The application was referred to Council's Tree Management Coordinator, who provided the following comments –

"The proposed demolition plan shows the removal of 4 trees from the site."

"The plans do not appear to show the Brush Box street tree or the neighbour's large Liquidambar tree in their front yard. The street tree needs to be retained protected and appropriately bonded."

"The landscape plan does not provide appropriate long lived tree replacement planting or plant species suitable for the site and area."

"The applicant has not provided a detailed Arborist report, arboricultural impact statement and tree management/protection plan for both the trees on site and neighbours trees. Accordingly, the impact on the site and neighbours trees, the

appropriateness of their removal and their viability both during and post construction cannot be determined.”

As a result of the above, an Arborist Report and Tree Management Plan was requested as an additional information. Further, should the application be supported, appropriate bonds will be imposed to the street tree that will be retained.

Traffic

The application was referred to Council’s Traffic Manager, who offered no objection to the proposed development, subject to the conditions of consent, should the application be supported.

Heritage

The application was referred to Council’s Heritage Advisor, who provided the following comments –

“The property is not a heritage item but is located in the vicinity of a heritage item. This Heritage item is known as Item 126 Fairholm – a Victorian house, located at 22-26 Cotswold Road.”

“The streetscape has changed in recent years with the majority of surrounding houses being large and modern.”

“...any development on the site will not impact on actual heritage item – Fairholm house and its setting, as it cannot be seen from the item.”

Council’s Heritage Advisor concluded that the proposal is acceptable on heritage ground, should it be supported.

Stormwater

The application was referred to Council’s Development Engineer, who offered no objection to the proposal, subject to the conditions of consent, should the application be approved.

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*.

(1) Matters for consideration – general

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provision of:**
- (i) any environmental planning instrument,**

Strathfield Local Environmental Plan

The development site is subject to the Strathfield Local Environmental Plan 2012

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The subject site is zoned R2 - Low Density Residential and the proposal is a permissible form of development with Council's consent.

Part 4 – Principal Development Standards

Applicable SLEP 2012 Clause	Development Standards	Development Proposal	Compliance/ Comment
4.3 Height of Buildings	9.5m	9.2m	Yes
4.4C Exceptions to FSR (Zone R2)	0.55:1 (481.9m ²)	0.0.6:1 (530.5m ²)	No (48.6m ² short or 10% variation) Basement – 49.4m ² Ground – 282.6m ² First – 198.5m ²

Floor Space Ratio

The proposed development involves a three-storey dwelling house, including a basement. Council's calculation of the gross floor area of the dwelling house, demonstrated in the most recent set of plans prepared by Nemco Design dated 09 September 2020, in accordance with its definition in the SLEP 2012 is 530.5m². Clause 4.4C of the Plan requires 481.9m². This means that the proposed FSR on the site is 0.6:1 (530.5m²) which contravenes the requirement of 0.55:1 (481.9m²) by 48.6m², presenting a 10% variation. The variation is not greater than 10%; therefore, referral of the application to the Strathfield Local Planning Panel is not necessary.

As shown in Figures 6 to 8 below, Council's calculation of the FSR is broken down per level. The areas shaded in grey are the areas included in the FSR calculation, with the exclusion of the void in the middle of the first floor that is to be excluded in the first floor gross floor area.

The following is the breakdown of the gross floor area of the dwelling house per level, that totals 530.5m².

- Basement – 49.4m²;
- Ground floor – 282.6m²; and
- First floor – 198.5m².

The gross floor area calculation in the basement does not include the following:

- 40m² double parking space, that is required in the SCDP 2005;
- Lift void;
- 21m² of storage space; and
- Vehicular manoeuvring area.

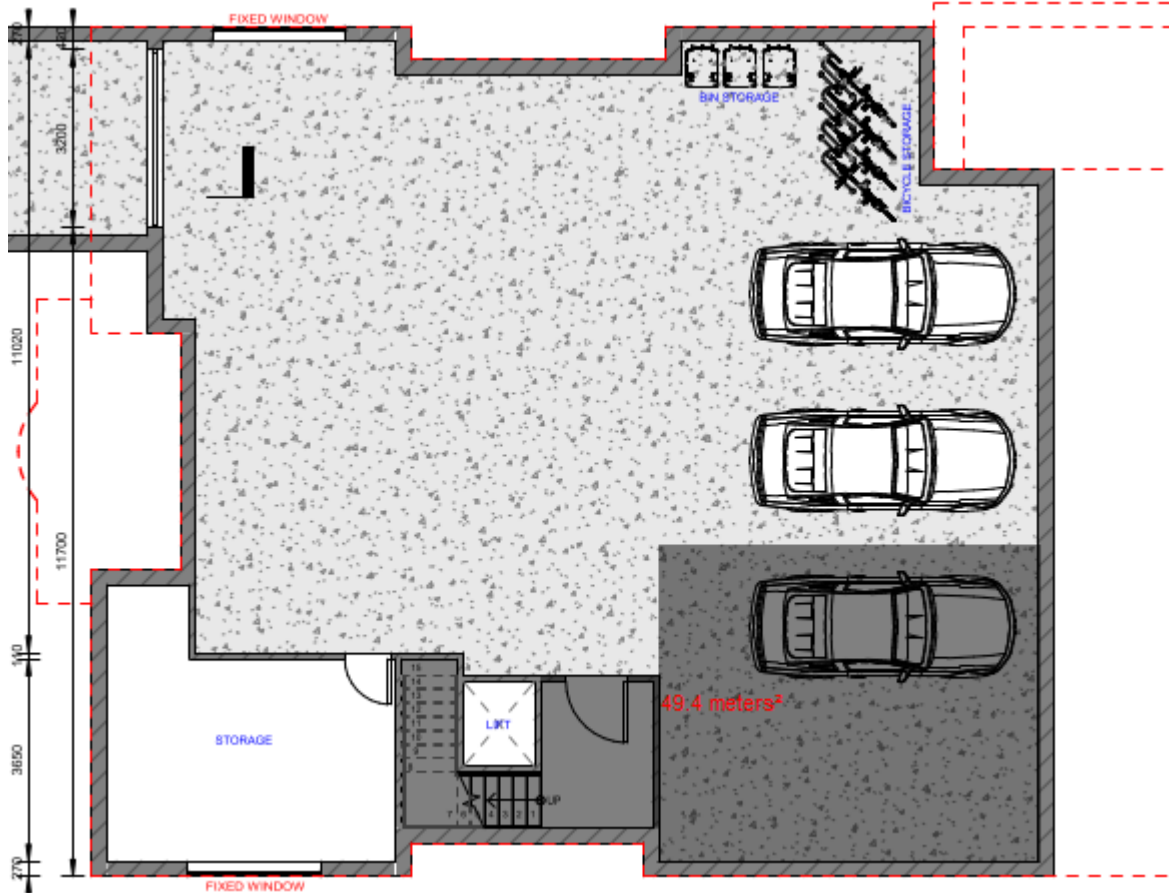


Figure 6. Extract of the basement floor plan (source: Nemco Design, dated 22/09/2020)

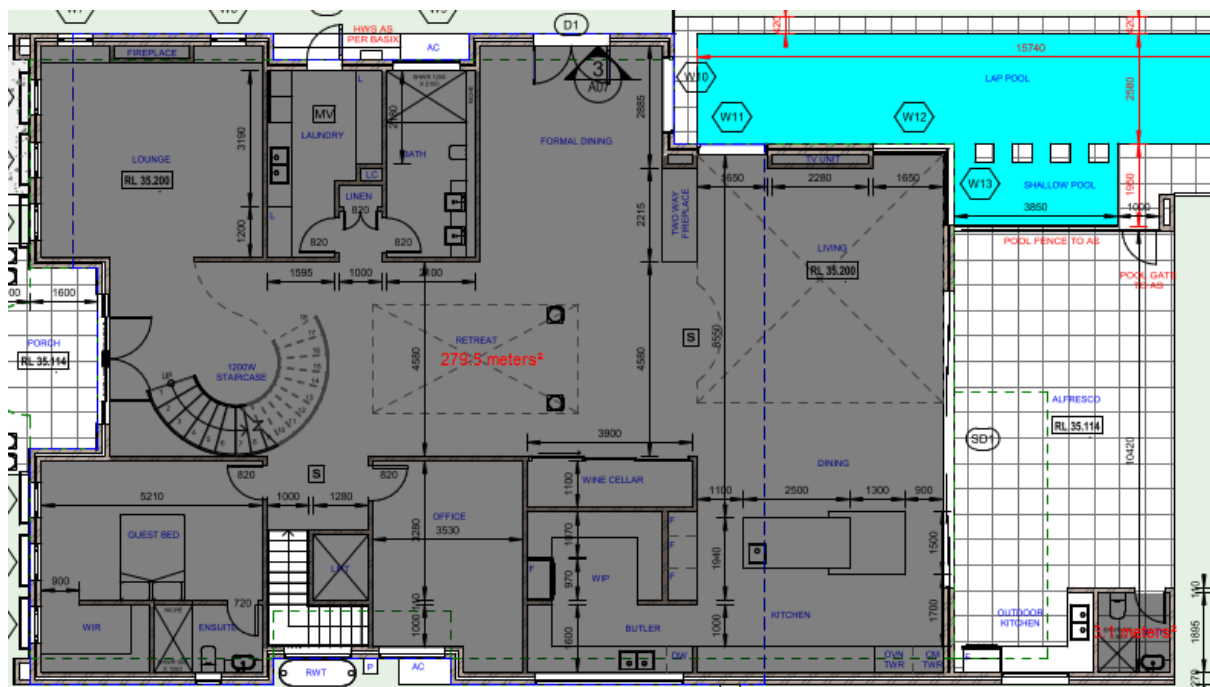


Figure 7. Extract of the ground floor plan (source: Nemco Design, dated 22/09/2020)

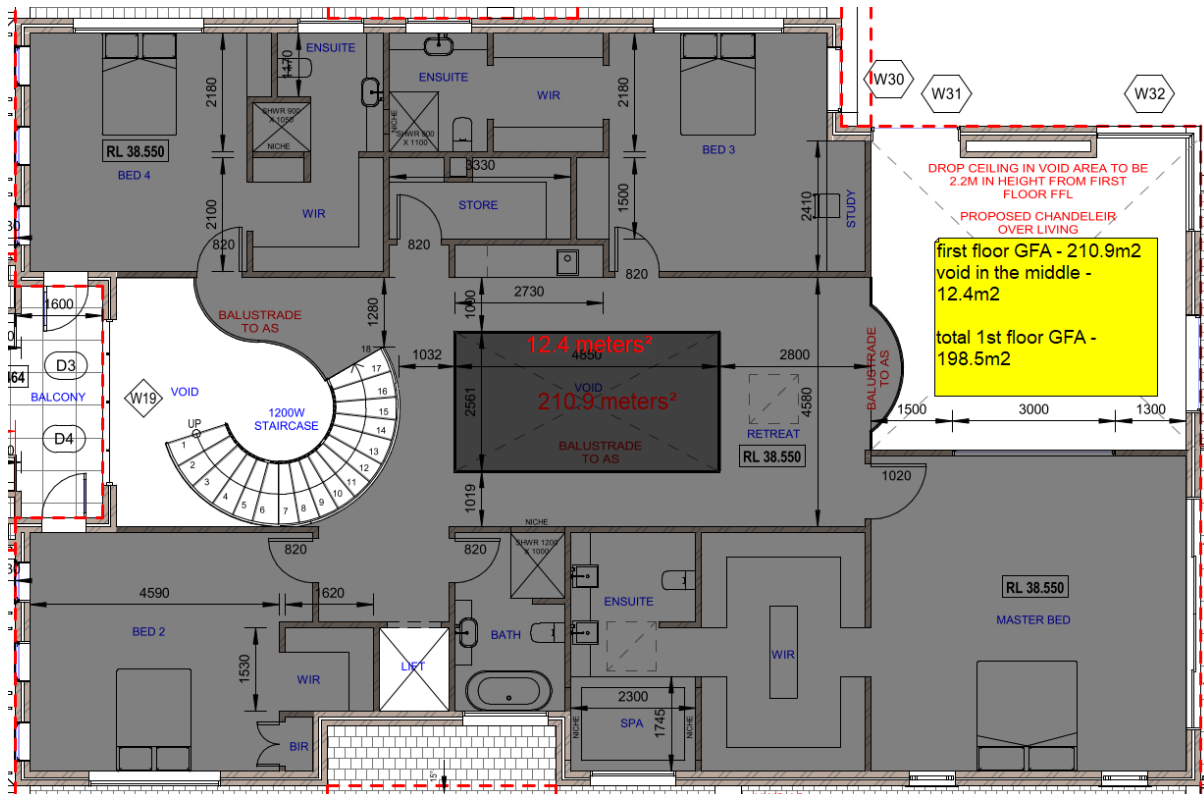


Figure 8. Extract of the first floor plan (source: Nemco Design, dated 22/09/2020)

It is often argued that stairs leading to the basement should not be calculated in the FSR. More often than not, the case law of *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181 is referenced as to why stairs to basements should not be included in the FSR calculation. However, note that the development in the mentioned case law is for a multi-dwelling housing and not for a single dwelling house.

The definition of gross floor area in accordance with the SLEP 2012 is as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes —

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

As shown in Figures 7 and 8 above, the ground floor and the first floor have a combined floor area of 478m². The maximum permitted GFA on the site is 481.9m². This already puts just the ground floor and first floor on the edge of the permitted GFA.

The basement as shown in Figure 6 includes a storage room, three parking spaces and a lift void, a lobby and a set of stairs. As per the definition of GFA in the SLEP 2012, the manoeuvring area of the two parking spaces, the two parking spaces and the lift void have been excluded in the FSR calculation. The third parking spot, as it is beyond what is required by Council for parking spaces, and the lobby and stairs, as it provide access to not just the parking spaces but to the storage space as well, are included in the FSR. As such, the gross floor area in all three storeys exceed the maximum permitted on the site, and is unsupportable.

The applicant was asked to submit a Clause 4.6 variation statement in order to address the development standard non-compliance.

Clause 4.6 Variation

The application contravenes a development standard, hence, a Clause 4.6 variation statement is required. The applicant was requested to provide the Clause 4.6 (Appendix A) variation statement on 20 October 2020. A Clause 4.6 variation statement was submitted on 19 November 2020, which is considered inadequate.

The variation statement submitted has failed to appropriately address how the *“compliance with the development standard is unreasonable or unnecessary in the circumstances of the case”* and that *“there are sufficient environmental planning grounds to justify contravening the development standard”*.

In accordance with Clause 4.6(3)(a) of the SLEP 2012, the proposed development does not satisfy the objectives of the standard, in particular, ensuring that dwellings are in keeping with the built form character of the local area. Further, it is considered that the underlying object or purpose of the standard, which is to prevent overdevelopment of a land and control the bulk and scale of a development, will not be met.

The bulk of the proposed house above the natural ground level will be controlled and restricted when the gross floor area in the basement is properly calculated.

Clause 4.6(3)(b) of the SLEP 2012 requires the variation statement to demonstrate *“that there are sufficient environmental planning grounds to justify contravening the development standard”*. The provided variation statement has failed to do so.

In accordance with the above, the proposed non-compliance with the FSR development standard is not supportable.

Part 5 – Miscellaneous Provisions

Heritage Conservation

The subject site is not listed as a heritage item or located within a heritage conservation area. The site is in close proximity to a heritage item and as such, a development under this clause is required.

The application was referred to council's Heritage Advisor. The details of this referral is in the referral section of this report.

Part 6 – Additional Local Provisions

Acid Sulfate Soils

The subject site is identified as having Class 5 Acid Sulfate Soils but is not located within 500m of a Class 1, 2 3 or 4 soils. Therefore, Development Consent under the provisions of this section is not required and as such an Acid Sulfate Soils Management Plan is not required.

Earthworks

The proposal involves significant excavation works for the provision of a basement, driveway ramps and ancillary works. The extent of excavation has been limited to the footprint of the ground floor above and access to and from the basement. However, due to the non-compliance with the floor space ratio on the site, which is largely due to the basement component of the proposal, it is considered that the proposed excavation is excessive and unreasonable. Therefore, the proposal is not supported under this clause.

Essential Services

Clause 6.4 of the SLEP 2012 requires consideration to be given to the adequacy of essential services available to the subject site. The subject site is located within a well serviced area and features existing water and electricity connection and access to Council's stormwater drainage system. As such, the subject site is considered to be adequately serviced for the purposes of the proposed development.

It is considered that the proposed development satisfies the aims, objectives and development standards, where relevant, of the Strathfield LEP 2012.

STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

A BASIX Certificate has been issued for the proposed development and the commitments required by the BASIX Certificate have been satisfied.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND (SEPP 55)

SEPP 55 applies to the land and pursuant to Section 4.15 is a relevant consideration.

A review of Council's records of the site give no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations.

The objectives outlined within SEPP55 are considered to be satisfied.

STATE ENVIRONMENTAL PLANNING POLICY (VEGETATION IN NON-RURAL AREAS) 2017

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 replaces the repealed provisions of clause 5.9 of SLEP 2012 relating to the preservation of trees and vegetation.

The intent of this SEPP is consistent with the objectives of the repealed Standard where the primary aims/objectives are related to the protection of the biodiversity values of trees and other vegetation on the site.

The proposal was referred to Council's Tree Management Officer who outlined specific conditions to be imposed with any development consent in order to ensure the protection of these trees. Further, no objection was raised to the removal of a number of trees on the site subject to replacement planting. Relevant consent conditions will be imposed.

The aims and objectives outlined within the SEPP are considered to be satisfied.

(ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*

There are no draft planning instruments that are applicable to this site.

(iii) *any development control plan,*

The proposed development is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005. The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP.

Applicable DCP Controls	DCP Controls	Development Proposal	Compliance/ Comment
Building Envelope			
Heights:			
Floor to ceiling heights:	3.0m	6.2m	No
Height to underside of eaves:	7.2m	7.2m	Yes
Parapet height:	0.8m	0.9m	No
Basement height above NGL:	1.0m	0.95m	Yes
Number of Storeys/Levels:	2	3	No
Setbacks:			
Front:	9m	8.3m	No
Side:	1.2m (min)	1.9m	Yes
Side:	1.2m (min)	1.9m	Yes
Combined Side Setback:	3.8m (20%)	3.8m	Yes
Rear:	6m	9.6m	Yes
Landscaping			
Landscaping/Deepsoil Provisions:	45% (394.2m ²)	45% (396m ²)	Yes
Private Open Space Area:	10m ²	>10m ²	Yes
Minimum dimension:	3m	>3m	Yes
Fencing			
Height (overall/piers):	1.5m (maximum)	2m	No
Solid Component:	0.7m	0.5m	Yes
Solar Access			
POS or habitable windows	3hrs to habitable windows and to 50% of POS	At least 3hrs to habitable windows & to 50% of POS	Yes
Vehicle Access and Parking			

Driveway width at Boundary:	3m	3.5m	No
Vehicular Crossing:	1	1	Yes
Driveway setback – side:	0.5m	1.9m	Yes
No. of Parking Spaces:	2	3	Yes
Basement:			
Basement protrusion	Less than 1.0m	0.95m	Yes
Basement ramp/driveway	3.5m	3.5m	Yes
Internal height:	2.2m	2.35m	Yes
Ancillary Development			
SWIMMING POOL			
Side/Rear Setback	1.0m	1.5m	Yes

Floor to Ceiling Heights

The proposed development is for a dwelling house that involves three voids over the ground floor level. See Figure 9 below. The voids, essentially, will make the ceiling height from the ground floor level be over by 3.2m from the required height of 3m, totalling a height of 6.2m.

Void 1 in the image below is to an entry and is an acceptable non-compliance. Void 3 over the ground floor living room will have a reduced ceiling height of 5.55m and is considered acceptable as it will have a ceiling height of no more than 2.2m from the first floor FFL. Void 2 will have the highest ceiling height of 6.2m. A 106% variation non-compliance.

Despite the above, Void 2 is supportable as it acts as a design feature of the dwelling house that would have no real impact on the scale of the building.

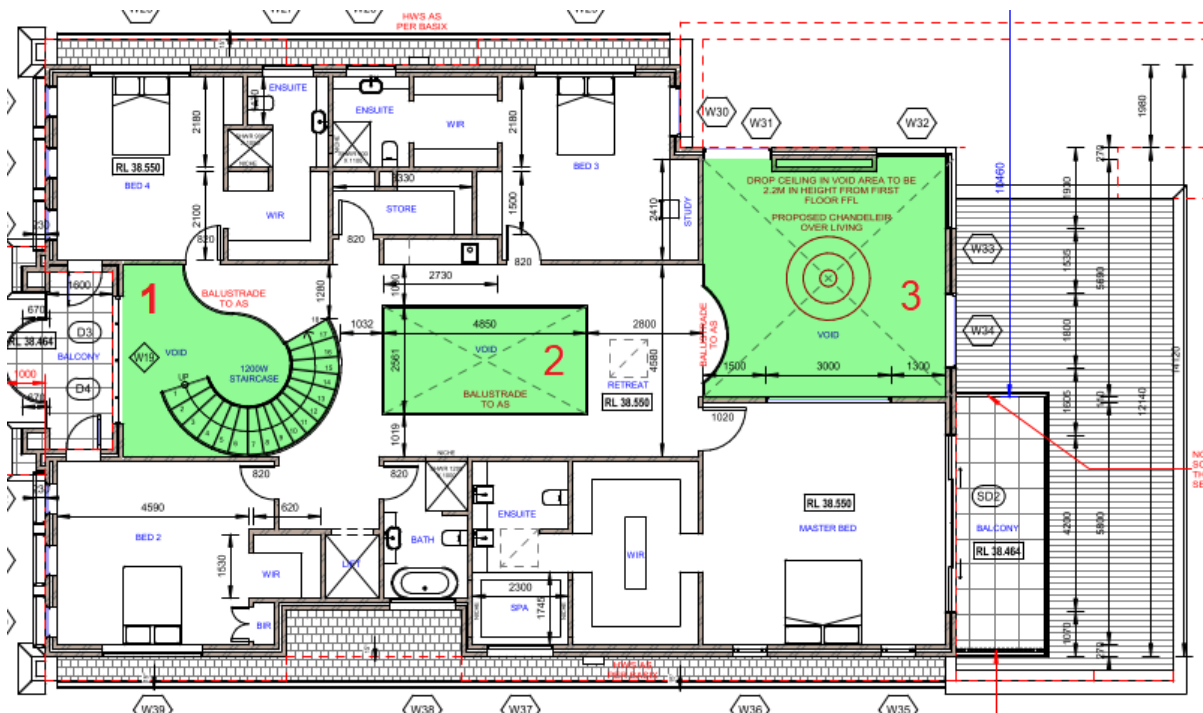


Figure 9. Extract of the proposed first floor (source: Nemco Design, dated 22/09/2020).

Portico and Parapet Height

The proposed dwelling house includes a design feature of a portico that extends beyond the understorey of the eaves and has a parapet wall height that exceeds the maximum allowed by the SCDP 2005. Figure 10 below is an extract of the front elevation of the dwelling house that shows the non-compliant design feature.

The portico exceedance beyond the understorey of the eaves is acceptable as it is a design feature that does not have any adverse impact on the neighbouring properties and the streetscape.

The parapet height exceeds the 0.8m maximum height allowed by 0.1m. The non-compliance is minimal and as previously discussed, the feature will have no adverse impact on the streetscape. Therefore, the proposed 0.9m high parapet is acceptable.



Figure 10. Extract of the south elevation with mark-up (source: Nemco Design, dated 22/09/2020)

Number of Storeys

The proposed dwelling house includes a basement level, ground floor and first floor; totalling three storeys. The SCDP 2005 requires a dwelling house to be no more than two-storeys. The proposal does not satisfy the requirements of the SCDP 2005.

Despite the above, Strathfield Council has approved in the past dwelling houses with three storeys. As such, the proposed number of storeys is acceptable as it presents no adverse amenity or environmental impact.

Front Setback

The SCDP 2005 requires a front setback of 9m. A setback, as defined in the SLEP 2012, is measured from the property boundary and "a building wall, or the outside face of any balcony, deck of the like, or the supporting posts of a carport or verandah roof, whichever is the

shortest". As such, the proposed development includes a first floor front setback of 8.3m, which does not satisfy the requirements of the DCP.

Despite the above, the non-compliant component of the dwelling house is considered minimal and is to be a design feature that will have no adverse impact on the streetscape. As such, the proposed front setback is acceptable.

Front Fence Height

The proposed development involves an open-form front fence that has a height of 2m. Figure 11 below shows that the 1.8m maximum fence height that the SCDCP 2005 requires is not measured to the fence's highest point. Figure 12 is a marked-up elevation that demonstrates additional 0.2m part of the front fence that had not been included in the measurement.



Figure 11. Extract of the front fence elevation (source: Nemco Design, dated 22/09/2020)

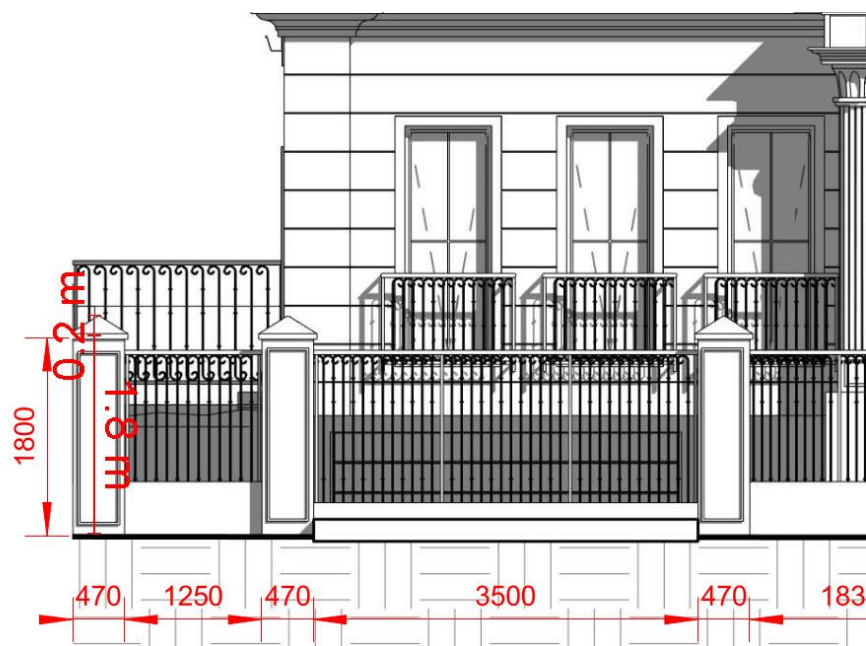


Figure 12. Extract of the marked-up front fence elevation (source: Nemco Design, dated 22/09/2020)

Driveway at Boundary

The most recent set of plans submitted to Council demonstrate that the proposed driveway at the front boundary has a width of 3.5m. The SCDCP 2005 requires driveways of dwelling houses to have a maximum width of 3m at property boundaries. The proposal does not satisfy this development control and exceeds by 0.5m. This is not supportable and should the application be supported, a condition of consent will be imposed to require the driveway to be tapered down to 3m at the boundary.

Landscaping and Open Space

The proposed development satisfies the relevant objectives and controls of the SCDCP 2005. The development is considered to enhance the existing streetscape, adequate areas for deep soil planting have been provided and can accommodate large canopy trees and where possible trees have been retained and protected.

Solar Access

Given the orientation of the site, solar access to windows of habitable rooms and to at least 50% of the private open space is achieved or maintained for a minimum period of 3 hours between 9.00am-3:00pm at the winter solstice. Solar access is also achieved or maintained to the private open space of the adjoining premises. The proposal is considered to generally satisfy the relevant objectives and controls of the SCDCP 2005.

Privacy

The proposed development includes windows on the first floor common bathroom (W38) and an ensuite (W37) that have sill heights of 0.8m and 1.4m width. The proposed master bedroom will have floor to ceiling windows that have a width of 0.7m (W35 and W36). Additionally, a rear balcony is proposed off the master bedroom that has the dimensions of 6.16m W x 2.2m D.

In order to alleviate any potential privacy concerns that may arise between the subject site and eastern neighbour, should the application be supported, the windows will be conditioned to be of obscure material and the rear balcony to be reduced in size to no more than 2m W x 1m D dimensions.

Cut and fill

The proposed development is considered to not satisfy the relevant objectives and controls of the SCDCP 2005 as the cut has not been kept to a minimum (due to the FSR non-compliance). As such, in this regard, the proposal is not acceptable.

ANCILLARY STRUCTURES

Swimming Pools, Spas & Associated Enclosures

The proposed development satisfies the relevant objectives and controls with SCDCP 2005. The pool has been adequately setback from all adjoining boundaries, allowing for screen planting if required. The swimming pool fence/enclosure will comply with the swimming pools act and relevant standards.

PART H – Waste Management (SCDCP 2005)

In accordance with Part H of Strathfield CDCP 2005, a waste management plan was submitted with the application. The plan details measure for waste during demolition and construction, and the on-going waste generated by the development during its use. It is considered that this plan adequately address Part H and considered satisfactory.

PART P – Heritage (SCDCP 2005)

As previously mentioned, the site is in close proximity to a heritage item which warranted the referral of the application to Council's Heritage Advisor. Council's advisor offered no objection to the proposed development on heritage grounds.

(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,

The requirements of Australian Standard AS2601–1991: *The Demolition of Structures* is relevant to the determination of a development application for the demolition of a building.

The proposed development involves the demolition of a building. Should this application be approved, appropriate conditions of consent may be imposed to ensure compliance with the requirements of the above standard.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

With the FSR development standard non-compliance, the proposed development is considered not of a scale that is in keeping with other existing developments or being constructed in the locality.

The unreasonable amount of excavation for the purpose of the basement will have adverse impact on the natural environment.

(c) the suitability of the site for the development,

It is considered that the proposed development is of a scale and design that is not suitable for the site having regard to the gross floor area exceeding the maximum permitted by the SLEP 2012.

(d) any submissions made in accordance with this Act or the regulations,

In accordance with the provisions of Councils Community Participation Plan, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. One submission was received raising the following concerns:

1. Visual Privacy

A concern was raised regarding four windows (W35, W36, W37 and W38) directly opposite the eastern neighbour's first floor windows. Further, the rear balcony having no privacy screen on the eastern elevation in the initially proposed design.

This raised issues have been discussed under the privacy section of this report, in the assessment against Council's SCDP 2005. Should the application be supported, the windows will be conditioned to be of an obscure material and the plans had been amended to include a privacy screen on the eastern side of the rear balcony.

(e) *the public interest.*

Due to the non-compliance with a principal development standard under the SLEP 2012 and controls in the SCDP 2005, the proposed development is of a scale and character that conflicts with the public interest.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. This section prescribes in part as follows:

A consent authority may impose a condition under Section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

STRATHFIELD INDIRECT SECTION 7.12 CONTRIBUTIONS PLAN

Should the proposal be supported, Section 7.12 Contributions are applicable to the proposed development in accordance with the Strathfield Indirect Development Contributions Plan as follows:

Local Amenity Improvement Levy	\$14,914.34
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Conclusion

The application has been assessed having regard to the Heads of Consideration under Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the provisions of the SLEP 2012 and SCDP 2005.

Following detailed assessment it is considered that Development Application No. 2020/132 should be refused in accordance with accompanying reasons for refusal.

Signed: P Santos
Development Assessment Planner

Date: 25/11/2020

☒ I confirm that I have determined the abovementioned development application with the delegations assigned to my position.

Report and recommendations have been peer reviewed and concurred with.

Signed: K Lindeberg
Executive Manager, Landuse Planning and Development

Date:

REFUSAL REASONS

Under Section 4.16(b) of the Environmental Planning and Assessment (EP&A Act 1979) this consent is **REFUSED** for the following reasons:

1. The proposed development is considered not acceptable pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979, as the floor space ratio proposed on the site exceeds the maximum permitted by Clause 4.4C of the SLEP 2012 by 32m² and presents a 9.3% variation.
2. The proposed development is considered not acceptable pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979, as the proposal does not satisfy the objectives of Clause 4.4 Floor Space Ratio development standard, in particular, ensuring that *“dwellings are in keeping with the built form character of the local area”* and *“impact of new development on the amenity of adjoining properties”* has been minimised.
3. The proposed development is considered not acceptable pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979, as the submitted written request does not satisfy Clause 4.6 of the SLEP 2012, in particular Subclauses (3)(a) and (b).
4. The proposed development is considered not acceptable pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979, as the proposal has not minimised the amount of excavation appropriate for the site and the proposed development, in accordance with Clause 6.2(3)(h) of the SLEP 2012.
5. The proposed development is considered not acceptable pursuant to Section 4.15(1)(b) of the EP&A Act 1979, as the unreasonable amount of excavation for the purpose of the basement will have impact on the natural environment.
6. The proposed development is considered not acceptable pursuant to Section 4.15(1)(c) of the EP&A Act 1979, as the proposed development is of a scale and design that is not suitable for the site having regard to the gross floor area exceeding the maximum permitted by the SLEP 2012.
7. The proposed development is considered not acceptable pursuant to Section 4.15(1)(e) of the EP&A Act 1979, as the non-compliance with Clause 4.4C of the SLEP 2012, a principal development standard, indicates that the application is not in the public interest.

APPENDIX A

VARIATION STATEMENT: FLOOR SPACE RATIO

Proposed:

**DEMOLITION OF ALL EXISTING STRUCTURES, REMOVAL
OF EXISTING TREES, CONSTRUCTION OF TWO-STOREY
DWELLING WITH BASEMENT PARKING, SWIMMING
POOL & CABANA**

**@ 25 HUNTER ST, STRATHFIELD
NSW 2135**

Clause justified:

Strathfield LEP 2012 – Part 4, Clause 4.4 – Floor Space Ratio

Prepared by:

Date:

19/11/2020



Variation Statement: Floor Space Ratio for two storey house

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Variation Statement: Floor Space Ratio for two storey house

1. Introduction

This Variation Statement has been prepared to accompany the Development Application for the proposed two storey house at 25 Hunter Street, Strathfield.
It should be read in conjunction with the architectural drawings and SoEE prepared by Nemco Design Pty Ltd.

The proposed non-compliance is with the following development standard under the Strathfield LEP 2012

- **Clause 4.4 – Floor Space Ratio**

This Variation request has therefore been prepared in accordance with the requirements of **Clause 4.6 of SLEP 2012 – Exceptions to Development Standards.**

2. Proposal

2.1. Maximum Allowable FSR

Under the provisions of Clause 4.4C in Strathfield LEP 2012, the site is subject to a maximum FSR of 0.55.

4.4C Exceptions to floor space ratio (Zone R2)

Despite clause 4.4, the maximum floor space ratio for a building on a lot being land in Zone R2 Low Density Residential, with an area specified in Column 1 of the Table to this clause, is the floor space ratio specified opposite that lot in Column 2 of the Table.

Column 1 Lot area (m ²)	Column 2 Floor space ratio
< 500	0.65:1
500-599	0.625:1
600-699	0.60:1
700-799	0.575:1
800-899	0.55:1
900-999	0.525:1
≥ 1,000	0.50:1

Figure 1. FSR

Based on a site area of 876.1 m² and based on an FSR standard of 0.55, a maximum GFA of 481.85 m² may be obtained across the site.

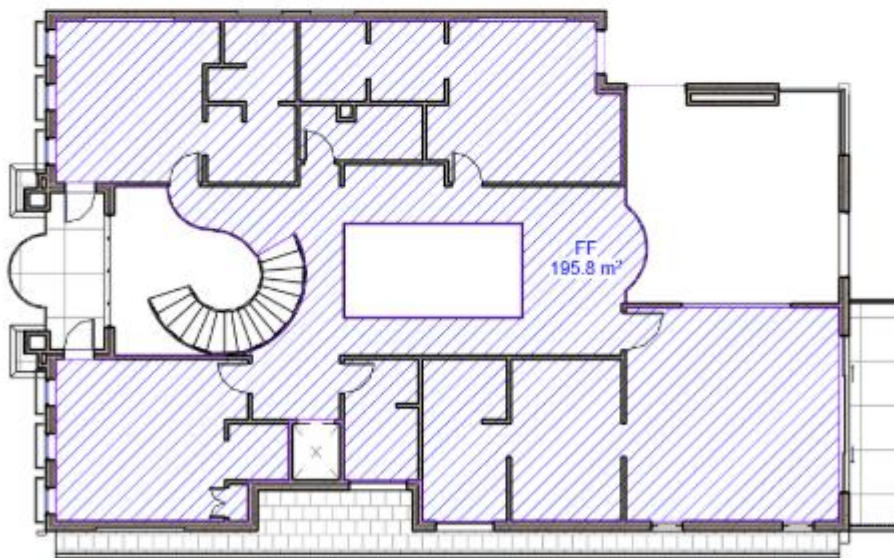
Variation Statement: Floor Space Ratio for two storey house

2.2. Proposed Variation

The proposed floor space ratio is as per below.



1 FSR - Ground Floor
1 : 200



2 FSR - First Floor
1 : 200

Variation Statement: Floor Space Ratio for two storey house



Figure 2. BASEMENT STORAGE AREA

SITE CALCULATIONS	
FLOOR AREA CALCULATIONS	
SITE AREA:	876.1m ²
AREA OF THE PROPOSED GROUND FLOOR:	286m ²
AREA OF THE PROPOSED FIRST FLOOR:	195.8m ²
AREA OF THE STORAGE, LIFT AND STAIRS TO BASEMENT:	33.48m ²
MAX. TOTAL FLOOR AREA	481.8m²
55% OF SITE AREA = 0.55 x 876.1m ² =	
PROPOSED TOTAL FLOOR AREA:	515.28m² > 481.8m²
SITE COVERAGE CALCULATIONS	
PROPOSED SITE COVERAGE:	480m² (54.8%)
(INC DWELLING ALFRESCO, PORCH, POOL AREA & DRIVEWAY)	
LANDSCAPING CALCULATIONS	
MIN. LANDSC. FORWARD OF BUILDING LINE:	85m ²
50% OF THE FORWARD AREA = 0.50 x 170m ²	
PROPOSED LANDSCAPING AT FRONT:	127m ² > 85m ²
PROPOSED LANDSCAPING AT REAR:	269m ²
PROPOSED TOTAL LANDSCAPED AREA:	396m² (45.2%)

Figure 2. Site Calculations as per A01.05 plan

Variation Statement: Floor Space Ratio for two storey house

"As per phone conversation on 15 October 2020, Patrick Santos requested to submit a variation by a clause 4.6 to the stairs to the basement and one level lift and the excess storage area (outside of 20 m2 allowable storage space)"

The total Storage area, stairs to basement and lift – allowable storage space: 33.48m2 – 20m2 = 13.48m2

A summary of the proposed variation is outlined in Table 1 below.

Table 1. Floor Space Ratio			
SLEP 2012 Clause	SLEP 2012 Development Standard	Proposed Development Non-Compliance	% of Variation
Clause 4.4 – Floor Space Ratio	Max. 0.55 FSR 481.8 m ²	The proposal seeks development consent for a 495.28 m ² (0.565)	1.5% (13.48 m ²)

3. Provisions and Objectives of Clause 4.6

Clause 4.6 seeks to provide appropriate flexibility to the application of developments standards in order to achieve better planning outcomes both for the development and from the development.

3.1. Clause 4.6(1)

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

We believe a degree of flexibility is required in reference to LEP floor space ratio standard due to the proposed total floor space ratio exceeding the maximum by 1.5%.

We trust a better outcome is achieved by accommodating for a more appropriate floor plan and design , the additional area is uninhabitable and not visible from the street.

3.2. Clause 4.6(3)

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

We believe that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the development proposal is consistent with the objectives of the standard and the zone.

Variation Statement: Floor Space Ratio for two storey house

3.3. Clause 4.6(4)

- (4) Development consent must not be granted for development that contravenes a development standard unless—
- (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.

We believe the two-storey house will be in the public interest because it is proposed within setback requirements so there is no visible variation in the street view appearance. Furthermore, the extra floor area is not visible to the public because all in the basement level and as per DCP clause 4.2.1 the gross floor area is excluding any storage, garbage, service areas.

4. Conclusion

In relation to meeting the objectives of the Strathfield LEP 2012 we believe that by proposing two storey house would not burden the neighbouring properties in any way.

We request that Strathfield Council takes on our proposal for a variation to the SLEP 2012 based on the below:

- Currently the proposal meets all other council requirements,
- Building heights have been met,
- All other controls have been met,
- We have designed significantly to accommodate for better and efficient design.

Considering these points, we request that Council looks favourably upon our proposal as it currently is. We have demonstrated a proactive approach to ensure all controls are met.

Regards,
Nemco Design
1300 868 072